[redacted]

DOCKET FILE COPY ORIGINAL

RECEIVED

JUN 23 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

In the Matter of	)	
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from AMERITECH CORPORATION, Transferor to SBC COMMUNICATIONS INC., Transferee	)	CC Docket No. 98-141
	)	
Common Carrier Bureau and Office of Engineering and Technology Announce Public Forum on Competitive Access to Next-Generation Remote Terminals	)	NSD-L-00-48 DA 00-891

COMMENTS OF KMC TELECOM, INC., NEWSOUTH COMMUNICATIONS, INC., AND NEXTLINK COMMUNICATIONS, INC. ON THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES PETITION FOR DECLARATORY RULING REGARDING BROADBAND LOOP PROVISIONING

Brad E. Mutschelknaus
Ross A. Buntrock
Michael Engel
KELLEY DRYE & WARREN LLP
1200 19th Street, NW, Suite 500
Washington, DC 20036
(202) 955-9600 (phone)
(202) 955-9792 (facsimile)
rbuntrock@kelleydrye.com (e-mail)

Their Attorneys

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

In the Matter of	)	
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from AMERITECH CORPORATION, Transferor to SBC COMMUNICATIONS INC., Transferee	)	CC Docket No. 98-141
	)	
Common Carrier Bureau and Office of Engineering and Technology Announce Public Forum on Competitive Access to Next-Generation Remote Terminals	)	NSD-L-00-48 DA 00-891

COMMENTS OF KMC TELECOM, INC., NEWSOUTH COMMUNICATIONS, INC., AND NEXTLINK COMMUNICATIONS, INC. ON THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES PETITION FOR DECLARATORY RULING REGARDING BROADBAND LOOP PROVISIONING

Pursuant to the Commission's *Notice*[1] KMC Telecom, Inc.("KMC"), NewSouth Communications, Inc. ("NewSouth"), and NEXTLINK Communications, Inc. ("NEXTLINK") ("Joint Commenters") by their attorneys, hereby submit their comments in the above captioned proceeding.

---

[1] *See* Public Notice, DA 00-1141, Pleading Cycle Established for Comments on ALTS Petition for Declaratory Ruling: Loop Provisioning (rel. May 24, 2000) ("ALTS Petition").

INTRODUCTION AND SUMMARY

KMC is a facilities-based competitive local exchange carrier ("CLEC") providing telecommunications and data services to businesses, governments and institutional end-users, as well as Internet service providers, long distance carriers and wireless providers in 34 Tier III markets,[2] predominately in the Southeastern and Midwestern United States. KMC currently provides on-net local dial tone, special access, private line, Internet access, ISDN and a variety of other advanced services and features. KMC currently operates in Tier III markets and has systems under construction in 3 additional Tier III markets. KMC expects these new systems to be commercially operational by the end of the first half of 2000.

NewSouth is an integrated communications provider ("ICP") providing a full suite of communications services to small and medium sized businesses in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee. To date, NewSouth has deployed a 7,800 route mile advanced digital network. NewSouth has built out approximately 200 collocations and deployed a series of Lucent AnyMedia 5ESS-2000 switches and Cisco ATM+IP packet-based switches. These switches, combined with Lucent packet-based Softswitch, central office collocations, a number of Points-Of-Presence ("POPs") and an extensive leased fiber network, enable NewSouth to provide ubiquitous service throughout its service territory.

NEXTLINK is a facilities-based CLEC providing service to small and medium sized businesses. NEXTLINK builds and operates high capacity fiber-optic and fixed wireless

---

[2] Tier III markets are cities with a population of 100,000 to 750,000.

networks to provide local, long distance, and data and enhanced telecommunications services.[3] With more than 410,000 metro fiber miles in service, NEXTLINK provides one of the most robust fiber optic networks in the United States. NEXTLINK is deploying a 384,000-fiber mile, inter-city fiber optic network connecting most major cities in the United States and Canada that is expected to be completed by the end of 2001. In addition, NEXTLINK just completed its purchase of Concentric Network Corporation, providing end-to-end broadband network assets and a full range of voice, data and Internet communications services throughout much of the United States. NEXTLINK uses unbundled loops and other network elements and services purchased from incumbent LECs ("ILECs") in conjunction with its own fiber network and state of the art switches to provide local exchange service.

The Commission has taken several important steps to promote the rapid deployment of broadband services to American consumers. First, in its *Advanced Services Order*,[4] the Commission concluded that: (1) the pro-competitive provisions of the 1996 Act apply equally to advanced services and to circuit-switched voice services; (2) the 1996 Act is technologically neutral and is designed to ensure competition in all telecommunications markets; and (3) the facilities and equipment used by ILECs to provide advanced services are network elements and subject to the obligations in section 251(c)(3). Again, in its *UNE Remand Order*[5] the Commission concluded that xDSL capable loops must be unbundled and made available to

---

3 NEXTLINK is developing a national fiber and fixed wireless network to offer end-to-end voice and broadband data communications over ATM or IP and frame-relay managed facilities.

4 *See Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 13 FCC Rcd 24011, Memorandum Opinion and Order (rel. Aug. 7, 1998).

5 *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238 (rel. Nov. 5, 1999) ("*UNE Remand Order*").

competitors to provide high speed data services.[6] The Commission emphasized that "[w]ithout access to these loops, competitors would be at a significant disadvantage, and the incumbent LEC, rather than the marketplace, would dictate the pace of the deployment of advanced services."[7]

As the existing rules have been implemented, ILECs, while not "dictating" the pace of the deployment of advanced services, are significantly gating the ability of carriers to roll out services to meet their customers' current demands. Therefore, while the Joint Commenters praise the Commission's prior decisions establishing national standards for loop availability, the Joint Commenters agree with ALTS that the Commission must now take the next step to ensure the widespread deployment of competitive advanced services by strengthening its existing rules.

The operational experience of the Joint Commenters stands in stark contrast to the goals the Commission hoped to achieve in drafting its rules governing access to loops capable of delivering broadband services, and accordingly, the Joint Commenters concur with ALTS that: (1) national loop ordering and provisioning intervals should be adopted by the Commission based upon the intervals established by the Public Utility Commission of Texas (the "Texas Commission"); (2) the Commission must ensure that copper loops remain available to competitive providers of advanced services; (3) the Commission must strengthen its rules to ensure nondiscriminatory access to subloop elements; (4) the Commission should take steps to ensure that ILECs do not discriminate against competitors in the provisioning of vital special access circuits; and (5) the Commission should put into place self-effectuating 271 style penalties for ILEC violations of the national loop provisioning standards established by the

---

6 *UNE Remand Order*, ¶ 190.

7 *Id.*

Commission in this proceeding. Full implementation of the interconnection and unbundling rules of the Act, as supplemented by the declaratory ruling sought by the ALTS Petition, is the fastest and surest way of achieving the Commission's goal of promoting competition in the broadband marketplace. In addition, granting the ALTS Petition will ensure that the pro-competitive rules already put into place by the Commission will be implemented in a manner that results in the efficient deployment of digital and broadband facilities and services.

I. THE COMMISSION SHOULD ESTABLISH NATIONAL MINIMUM PROVISIONING STANDARDS FOR ALL FLAVORS OF LOOPS TO ENSURE THAT COMPETITORS HAVE NONDISCRIMINATORY ACCESS

Toleration of national variance in the availability of unbundled loops, the essential input for all competitive providers of telecommunications services, will only serve to deter the continued roll-out of ubiquitous advanced services. Indeed, the Commission has recognized in several context including its *Advanced Services* and *UNE Remand* dockets, that national rules for collocation as well loop availability provide the best regulatory framework for ensuring local competition and efficient broadband deployment. There can be no question that the successful development of a competitive broadband service market, providing DSL and other advanced services, will in large part hinge on the ability of competitors to obtain nondiscriminatory access to all grades of loops, including broadband capable loops. Similarly, adoption of uniform national standards for loop ordering and provisioning will further encourage the deployment of advanced services by increasing predictability and certainty of loop access, and address the existing situation where placing a loop order is tantamount to rolling the dice. Accordingly, the Joint Commenters join in ALTS' request that the Commission clarify that ILECs, pursuant to their unbundling obligations under the Act, must provision all grades of loops, including voice-

grade and high-capacity loops, at a level constituting parity with the interval and quality with which the ILEC provides loops to itself.

A. Existing ILEC Loop Ordering Procedures and Provisioning Are Discriminatory

The Joint Commenters concur in ALTS' assessment of current ILEC loop ordering processes, which continue to be inefficient, discriminatory, and needlessly prolong the provisioning interval for loops. The Joint Commenters also agree with ALTS that many of the ILECs have established rigid processes that prevent CLECs from ordering loops until collocation facilities are ready and waiting. Accordingly, the Joint Commenters join ALTS in seeking a Commission ruling clarifying the obligation of ILECs to allow competitors to order loops in an efficient manner that does not needlessly delay a CLEC's ability to provide service to customers.

As ALTS explained in its Petition, the most common explanation proferred by the ILECs for refusing to accept CLEC orders for loops until completion and turnover of collocation facilities is that no orders can be entered unless they are identified by a Carrier Facility Assignment ("CFA"). The Joint Commenters do not disagree that a CFA is essential to match up loop orders with their correct termination locations of a CLEC's multiplexer. There is no reason, however, that ILECs cannot assign the CFA earlier in the process, before the turnover date for collocation facilities. NEXTLINK has found that departure from the strict requirement that the collocation be completed before loop orders can be accepted can be accomplished with no disruption to the ILECs' operations. For example, NEXTLINK convinced one ILEC to accept loop orders before collocation delivery dates after both parties concluded that the CFA could be assigned approximately 15 days before the collocation delivery date. Through earlier assignment of the CFA, the interval for delivery of loops was shortened to approximately 15 days after the

collocation space was completed. Although this interval still is not ideal, it shows that the ILECs have the ability to adhere to a requirement that loop orders be accepted before collocation space is completed.

The Joint Commenters also agree with ALTS' assertion that discrimination between the ILEC's treatment of their own operations and those of CLECs – especially with regard to provisioning intervals – is rampant. U S WEST, for example, has established a five day interval for provisioning of unbundled loops to CLECs. It establishes a two to three day interval for the provision of dial tone services to similarly situated retail customers as those targeted by CLECs. U S WEST's explanation for this disparity underscores the need for continued Commission vigilance on this issue. U S WEST asserts that its systems are set up to quickly handle their own dial tone orders. UNE loop orders, on the other hand, are considered a "Designed Service" that requires the development of a "Design Layout Record" and other processes. The Commission should make clear that where an ILEC and a CLEC are competing head to head for the same customers, for the same service, the interval for the delivery of unbundled loops should be no longer than the interval for provisioning the facility for the ILEC's retail operations.

Significantly, the Commission has already received numerous complaints of poor ILEC loop provisioning. NEXTLINK, in particular, has experienced significant substandard provisioning similar to that detailed in ALTS' Petition.[8] For example, Bell Atlantic is routinely late in providing orders, with an on-time rate through May of this year ranging from 57% in New

---

[8] *See generally* ALTS' Petition. In the SBC-Texas 271 Application, multiple commenters provide explicit details of ILEC provisioning discrimination. *See also Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Texas*, CC Docket No. 00-4.

York to 21% in Washington, D.C.[9] In several instances, delivery to NEXTLINK's New Jersey and Pennsylvania customers was inexplicably delayed by Bell Atlantic. Bell Atlantic's excuses range from installers showing up at the wrong site to, in one instance, falsely claiming that NEXTLINK's equipment was reversed in its cage. Bell Atlantic was finally forced to recognize that NEXTLINK's equipment was set-up correctly and the order was completed, albeit several weeks later. These are just a few of countless instances of ILEC abuses that are entirely inexcusable. For these reasons, the Joint Commenters join the ALTS Petition and request the Commission set meaningful guidelines and penalties that will require ILECs to cease their discriminatory behavior.

B. The Commission Must Ensure that Copper Loops, Vital to the Competitive Deployment of DSL, Are Available Ubiquitously, Regardless of the ILECs Choice of Network Architecture

As the ALTS Petition makes clear, copper loops are, without a question, becoming increasingly scarce in the network as ILECs push the deployment of fiber facilities deeper into the network.[10] In fact, SBC notes in its 1999 Annual Report that it plans, as part of Project Pronto, to migrate customers to fiber and retire existing copper network plant.[11] The Joint Commenters recognize that deployment of fiber-fed RTs can increase competition. However, competition will be robust only if ILECs supplement, but do not replace, the existing infrastructure used by competitors to reach consumers.

---

9 Notably, the District of Columbia Commission is currently reviewing the gross failure of Bell Atlantic to make advanced services available to District residents.

10 ALTS Petition, 9.

11 *See* SBC Communications 1999 Annual Report at 29, Note 5.

1. Deployment of RTs Is Artificially Leading to Copper Exhaust

Implementation of SBC's Project Pronto, and similar initiatives resulting in the retirement of copper facilities, threaten the ability of competitive carriers to compete in the advanced services marketplace by significantly diminishing the ability of competing providers of service to access all-copper loops to provide their services. Accordingly, the Joint Commenters join ALTS in urging the Commission to clarify that ILECs must provide alternatives to DLC-served loops in the form of "swapping" out an in-service fiber loop with a dormant copper loop, or a "work-around" configuration. As the Commission has long recognized, section 251(c)(3) does limit the types of telecommunications services that competitors may provide to those services offered by the incumbent LEC. Further, the Commission long ago concluded that ILECs must provide competitors with access to unbundled local loops, regardless of whether or not the ILEC uses DLC to serve end users.[12] The Joint Commenters urge the Commission to take steps to ensure that competitive carriers continue to have an opportunity to provide xDSL services using the existing copper infrastructure. Unless the Commission takes steps to ensure that competitors are able to continue to provide their services, regardless of the presence of an RT, Project Pronto and similar initiatives will harm competition and will hamper advanced services deployment.

2. The Commission Should Ensure That Spare Copper Remains Available

Specifically, the Joint Commenters urge the Commission to require that ILECs not only provide alternatives to DLC-served loops, but also continue to maintain their existing copper loop infrastructure so that these loops may be provided as network elements to requesting

---

[12] *UNE Remand Order*, ¶¶ 382-383.

telecommunications carriers. Requiring maintenance of the existing copper loop plant will ensure that the copper famine, being artificially created by ILEC retirement of copper plant as they deploy RTs deeper and deeper into the network, does not occur prematurely. It also will ensure that the network is not held hostage by the ILECs' selection of a particular technology. The Joint Commenters submit that no pro-competitive purpose is served by removing copper facilities from the pool of available loops. By contrast, preservation of these loops will ensure that competitors have access to network elements necessary to provide non-ADSL based services, and to provide a true alternative to ILEC advanced services offerings.

3. The Commission Possesses the Authority to Require that Copper Be Maintained

Requiring maintenance of the existing copper loop plant resident in the ILEC network is consistent with obligations imposed by section 251(c)(3). Indeed, in its *UNE Remand Order*, the Commission made clear that "dead count" loops and "vacant" copper in the network are within the definition of an unbundled loop.[13] Once an ILEC migrates customers to fiber-fed RTs, the existing copper loop capacity becomes capacity that is "in place and easily called into service" as an unbundled local loop.[14] Accordingly, even though the ILEC would not be using these loops to serve its own customers, they would continue to be available to competitors as an unbundled local loop network element.

At bottom it is clear that the obligation to provide (and maintain) copper loops on an unbundled basis applies with full force to loops provided through DLC arrangements. The Commission's rules require that an ILEC "provide competitors with access to unbundled loops regardless of whether [it] uses integrated digital loop carrier technology, or similar remote

---

13 *UNE Remand Order*, ¶ 174.

concentration devices, for the particular loop sought by a competitor."[15] One common way ILECs provide this access is through the use of a "spare" copper loop that bypasses the DLC. As Jato Communications has argued, ILECs that deploy RTs are, in effect, making their existing loop plant as "spare" loops, creating abundant alternative loops for competitive DSL carriers to use.[16] The Joint Commenters submit that the Commission should grant the ALTS Petition and confirm that ILECs must provide alternatives to DLC-served loops, including the obligation to provide access to "spare" copper that has been rendered surplus by the deployment of RTs.

C. The Commission Should Reaffirm the ILECs' Obligation to Provide Subloop Facilities in a Nondiscriminatory Manner

In the *UNE Remand Order* the Commission concluded that ILECs are required to provide unbundled access to subloops at any technically feasible point[17] finding that lack of access to unbundled subloops at technically feasible points throughout the incumbent's loop plant will impair a competitor's ability to provide services that it seeks to offer. [18] The Commission's conclusion was based on a finding that denying CLECs access to "subloop elements, like the loop itself, would materially raise entry costs, delay broad-based entry, and

---

14 *Id.*

15 *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, ¶ 383 (1996) (*Local Competition First Report and Order*); *see UNE Remand Order*, ¶ 218.

16 *See* Letter of Jato Communications, Inc., Ex Parte Presentation, CC Docket 98-141 (May 23, 2000).

17 The Commission clarified that "technically feasible points" include points near the customer premises, such as the point of interconnection between the drop and the distribution cable, the NID, or the MPOE, as well as any FDI, whether the FDI is located at a cabinet, CEV, remote terminal, utility room in a multi-dwelling unit, or any other accessible terminal.

18 *UNE Remand Order*, ¶ 209.

limit the scope and quality of the competitive LEC's service offerings."[19] Today however, as the ALTS Petition points out, CLECs face serious obstacles in obtaining subloops in a timely, efficient manner. By some estimates, as many as 30 percent of ILEC local loops in some markets are behind DLCs that employ RTs, and the number will only continue to grow in the future.[20] As a result of this deployment, carriers seeking access to unbundled subloop elements will find such access increasingly difficult. While the Commission has already required that the subloop be unbundled, the Joint Commenters are increasingly concerned that despite the existence of these unbundling obligations, unilateral ILEC decisions regarding network architecture (such as Project Pronto) will potentially deprive competitive carriers of the copper loops they need to provide alternatives to ILEC xDSL services, and will impose substantial limits on the ability of carriers to collocate at the remote terminal. The result will be delay, if not preclusion, of deployment of competitive advanced services.

Therefore, the Joint Commenters join ALTS in seeking a Commission ruling that leaves no doubt that ILECs have an obligation to provide subloops to any carrier, for any service, on a just, timely and nondiscriminatory basis. The Joint Commenters echo ALTS' request that the Commission take all necessary steps to ensure that CLEC access to subloops is unimpeded by interpreting Rule 51.319 in such a manner that ILECs must: (1) give unrestricted access to copper loops from any RT; and (2) provide "work-arounds," preferably through the maintenance of existing copper facilities. These requirements would help ensure that CLECs are able to provide innovative alternatives to subscribers served by DLC loops. The Joint Commenters

---

19 *Id.*

20 Indeed, SBC alone has indicated that under Project Pronto it intends to deploy over 20,000 new or upgraded remote terminals throughout its 13 state region. *See* Letter of Paul K. Mancini to Lawrence E. Strickling, Feb. 15, 2000, CC Docket 98-141.

submit that a Commission declaration would make enforceable the Commission's subloop unbundling rules set forth in the *UNE Remand Order* on a nationwide basis.

D. The Commission Must Promulgate Rules to Ensure Nondiscriminatory Provisioning of Critical Special Access Circuits

Increasingly, facilities-based CLECs investing in permanent telecommunications infrastructure serve customers through the purchase of special access circuits from ILECs' special access tariffs. As ALTS point out, "special access circuits ...retain a key role in the deployment of competitive broadband services."[21] Typically, CLECs utilize these special access circuits to carry traffic between the ILEC's serving wire center and an interexchange carrier's POP, or the POP of large end-user customers of CLECs. In addition, the Commission has concluded that special access circuits purchased by CLECs can be converted to combinations of unbundled network elements at TELRIC prices.[22] Whether a CLEC purchases special access circuits or UNE combination circuits is transparent to the CLEC's end-user customer. As the ALTS Petition and the empirical experience of the Joint Commenters indicate, however, ILEC performance in provisioning special access circuits is grossly discriminatory against CLECs.[23] Moreover, ILECs have little incentive to change their discriminatory behavior unless they are being reviewed by the Commission in the context of a merger application or a 271 bid,[24] and

---

21 ALTS Petition, 16.

22 *See, e.g., In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, Supplemental Order, ¶ 4 (rel. Nov. 24, 1999).

23 ALTS Petition, 17.

24 The New York Public Service Commission, as part of its evaluation of Bell Atlantic-New York's Section 271 application, required Bell Atlantic to submit a Performance Assurance Plan ("PAP"), which the Massachusetts D.T.E. is now considering adopting wholesale in the context of its consideration of Bell Atlantic-Massachusetts' 271 application. *See Order Adopting the Amended Performance Assurance Plan and Amended Change Control Plan*, Case No. 97-0271 and 99-0949 (NYPSC Nov. 3, 1999).

even then discrimination in the provision of special access circuits is rampant. Accordingly, the Joint Commenters submit that the Commission should grant the ALTS Petition and require ILECs to provision special access circuits within the same interval in which they install these circuits for their own retail services.

The UNE and special access circuits that the Joint Commenters order from ILECs are exactly the same circuits that ILECs provision to their own retail customers. The equipment used to service those circuits is located in the same ILEC central offices and uses the same optical carrier systems. Moreover, many of the same ILEC engineering and outside plant personnel service these circuits. The propensity for an end-user customer of a CLEC to suffer service outages or network degradation is the same regardless of whether the customer's service is provisioned over a special access circuit, or whether provisioned over a circuit consisting of a UNE combination. Because of the fungibility of special access circuits for UNEs and of the continued importance of special access in the competitive marketplace, it therefore follows that the Commission should require that ILEC performance in provisioning special access circuits to CLECs should be nondiscriminatory.

NEXTLINK's experience in New York is analogous to the performance witnessed by the Commission in its monitoring of the Bell Atlantic/NYNEX Merger,[25] and

---

However, as NEXTLINK has argued in both the New York and Massachusetts proceedings, the PAPs are fatally flawed in that they fail to measure Bell Atlantic's performance in provisioning special access circuits to CLECs. Rather, the existing performance metrics are designed to capture only Bell Atlantic's performance in the provisioning of these circuits only when they are purchased as combinations of UNEs.

25 As the ALTS Petition indicates, the FCC's reports focus on three aspects of provisioning for the period of September 1997 through December 1999: average interval completed; missed appointments; and mean time to repair. According to the FCC's analysis, Bell Atlantic's average installation period for "special service UNEs," which include special access circuits, for the last 13 months was much shorter than its average installation period for CLEC circuits. In fact, Bell Atlantic's provisioning of CLEC special access circuits has become increasingly slow, with many installations taking approximately 26

underscores the need for the Commission to establish provisioning intervals for special access circuits. For example, Bell Atlantic's on-time performance for NEXTLINK's orders of special access circuits in New York has been as low as 19% and has never exceeded 67% in any given month. Yet, this poor performance has no consequence for Bell Atlantic despite its significant impact on NEXTLINK's customers, and its devastating effect on competition. Failure to eliminate this type of discrimination will slow rollout of competitive broadband services to a trickle.

Therefore the Joint Commenters urge the Commission to adopt special access provisioning benchmarks in keeping with the nondiscrimination mandate of Section 251. Imposition of maximum special access provisioning intervals will ensure that ILECs do not favor their own retail advanced services over providing nondiscriminatory service to CLECs and in acting to eliminate this discrimination, will speed the advancement of the deployment of competitive broadband services.

---

to 55 days to complete. In addition, Bell Atlantic has missed CLEC installation appointments an average of 20 percent to 30 percent over the last year, while that percentage for Bell Atlantic self-installation has continued to drop to almost zero percent. Finally, the mean time to repair CLEC special access circuits has seen a dramatic increase for the last 38 months, and in December 1999 reached an average of 40 hours. Bell Atlantic continues to repair its own special access circuits at a virtually constant average of eight hours per circuit. In all three provisioning aspects that the Commission's reports monitor, Bell Atlantic's practices have worsened substantially in the last twelve months.

II. THE COMMISSION SHOULD PROMULGATE NATIONAL MINIMUM xDSL LOOP PROVISIONING STANDARDS AND SELF-EXECUTING REMEDIES

A. The Commission Has Both the Authority and a Sufficient Record to Issue a Declaratory Ruling Specific to ILEC Provisioning of xDSL-Capable Loops

Under the 1996 Act, the Commission has ample authority to promote competition. Specifically, sections 251 and 706 of the Act enable the Commission to adopt rules requiring ILECs to provide unbundled DSL loops in a nondiscriminatory and efficient manner. Section 251 generally provides the Commission with authority to adopt rules for the unbundling of network elements.[26] Section 706 further empowers the Commission to act wherever it perceives that advanced telecommunications services are not being developed.[27] Therefore, because local loops are an unbundled element and because DSL capable loops, in particular, are integrally related to the proliferation of advanced services, the Commission has jurisdiction to establish explicit nationwide provisioning intervals and standards for DSL capable loops.[28]

B. The Commission Should Mandate That Information Regarding the Availability Of Advanced Service Capable Loops Be Made Available on a Non Discriminatory Basis And Should Establish Minimum Provisioning Intervals

Competitive providers of advanced services require access to loops and loop information in a timely manner, at a level that is at parity with the access enjoyed by the ILEC

---

26 47 U.S.C. § 251(d)(1).

27 1996 Act, § 706(b).

28 *Local Competition First Report and Order*, ¶ 41 (stating that nationwide rules are appropriate "where they facilitate administration of sections 251 and 252, expedite negotiations and arbitrations by narrowing the potential range of dispute where appropriate to do so, offer uniform interpretations of the law that might not otherwise emerge until after years of litigation, remedy significant imbalances in bargaining power, and establish the minimum requirements necessary to implement the nationwide competition that Congress sought to establish").

itself. Because the ILECs possess overpowering leverage in the advanced services market, ILECs are able to use their control of loops and loop information to disadvantage competitive carriers. CLECs simply cannot effectively compete in the DSL market until the Commission imposes rules requiring timely and nondiscriminatory provisioning of loops and loop information. The Joint Commenters, therefore, request that the Commission adopt minimum guidelines for ILEC loop provisioning. These guidelines should: (1) require accurate and comprehensive loop information; and (2) establish a timeframe with which to provide loop information.

In order to enter the advanced services marketplace, CLECs must be able to determine whether they will be able to provide advanced service in a region. Specifically, CLECs must be able to accurately establish: (1) what types of loops are available, *i.e.*, whether the loops are copper or fiber; (2) the length of the loop, including bridged taps, which is a key determinant of whether service may be provided; (3) the length and location of bridged taps; (4) the number and location of load coils on the loop; (5) whether any portion of the loop is served by DLC and, if so, whether it is integrated DLC or universal DLC; and (6) the location of repeaters, if any, on the loop. Notably, the Commission has already required ILECs to provide this information, yet the ILECs routinely withhold it.[29] Also, the Commission must establish benchmarks for measuring ILEC performance in meeting CLEC requests for the above loop information.[30]

---

29 *UNE Remand Order* ¶ 437.

30 In the *Bell Atlantic 271 Order*, the Commission merely recognized that loop information is available from Bell Atlantic. The Commission did not establish specific rules for how, when, and in what form such information must be provided.

Delays and the provision of misinformation by ILECs are commonplace. Presently, in the SBC-Texas 271 proceeding, there exists substantial evidence that SBC continues to exercise a stranglehold over competition by providing loop information in substandard fashion. Several commenters detail at length unreliable, delay-ridden manual processes for providing DSL loop information.[31] Rhythms, for example, describes how SBC has failed to update pre-ordering OSS interfaces to enable real-time electronic access to loop information.[32] The comments to that proceeding, and the findings of the Texas Commission, only serve to demonstrate SBC's provisioning is clearly discriminatory when compared to the streamlined access SBC provides to its own DSL sales division.[33] Numerous examples of ILEC discrimination are already on record. In the Massachusetts 271 proceeding, Bell Atlantic impressively stated that it provides DSL service to end users within a maximum of 6 calendar days from the date of the order.[34] Similarly, SBC-Texas is able to provide loops in the Houston area in only 11 days.[35] CLECs, however, cannot provide loops at these intervals due to ILEC delays. CLECs, therefore, operate at a severe competitive disadvantage and are unable to establish consumer confidence.

Adopting provisioning intervals ensures that ILECs, CLECs, and the Commission will be able to look to one standard in evaluating compliance, rather than looking to varying state

---

31 *CC Docket No. 00-4*, Rhythms Comments at 32-33, Covad Comments at 9, NorthPoint Comments at 13, 17-19, Comments of the CLEC Coalition at 18-20.

32 Rhythms Comments at 29.

33 *Petition of Rhythms Links Inc. for Arbitration to Establish an Interconnection Agreement with Southwestern Bell Telephone Company*, Docket Nos. 20226 *et al.*, Arbitration Award at 69-70 (Pub. Util. Comm'n of Texas, Nov. 30, 1999) ("*Rhythms-Covad Texas Arbitration Award*"); *see also* Rhythms Comments at 22-26, 33-34; Covad Comments at 10-13.

34 Bell Atlantic-Massachusetts 271 Proceeding, D.T.E. 99-271, BA Response to In-hearing Data Request DTE-RR-81 (Nov. 19, 1999).

imposed intervals, a reasonableness-type standard, or forcing parties to flood the Commission with evidence of discrimination. In sum, concrete DSL loop provisioning intervals would "establish the minimum requirements necessary to implement the nationwide competition that Congress sought to establish."[36]

The Joint Commenters concur with the ALTS Petition, and recommend that the Commission adopt the approach of the Texas Commission. The Texas Commission requires that SWBT "provision 95 percent of DSL orders within 3 business days (for 1-10 loops), 7 business days (for 11-20 loops) and 10 business days (for 20+ loops)."[37] This interval runs from the application date to completion date for new, terminating, and change orders.[38] These intervals are clearly reasonable because the ILECs already meet them for themselves. In addition, to prevent discrimination, if a shorter loop provisioning interval is provided to an ILEC affiliate, the ILEC must then provide that shorter interval to all requesting carriers.

---

35 NorthPoint Comments at 12 (*citing* Dysart Affidavit in support of SBC).

36 *Local Competition First Report and Order* ¶ 41.

37 *Line Sharing Order* ¶ 174, *citing* SWBT Performance Measurements and Business Rules, Version 1.6, Measurement #55.1, Average Provisioning Intervals for Unbundled Network Elements, at 65 and 69, Installation Interval - DSL.

38 *See Line Sharing Order* ¶ 174. The application date is the date that the requesting carrier authorizes the ILEC to provision the DSL-capable loop. The completion date is the day that the ILEC completes the service order. If loop qualification determines that no conditioning is required, the application date is the date the ILEC returns the loop qualification. If the loop qualification concludes that conditioning is required, the requesting carrier must notify the ILEC whether it wants the loop conditioned. If the requesting carrier supplements the request to order the conditioned loop, the application date becomes the date that the incumbent receives the supplement. *See* SWBT Performance Measurements and Business Rules, Version 1.6, at 65.

C. The Commission Should Establish Self-Executing 271-Style Remedies to Ensure Compliance With Provisioning Standards

As NEXTLINK has observed in the context of 271 proceedings, absent non-discriminatory behavior, and provisioning standards and meaningful penalties with real remedies, NEXTLINK cannot commit to its customers that they will receive service comparable to that which they received before switching their service to NEXTLINK. For these reasons, it is critical to the successful creation of a competitive marketplace for local telecommunications service that precise standards exist for measuring ILEC performance, and that to the extent that ILECs fail to meet those standards, that effective, self-enforcing remedies be in place. Accordingly, the Joint Commenters support ALTS Petition seeking implementation of self-executing monetary penalties for ILEC failure to comply with the provisioning rules established in the context of this proceeding to ensure ILECs compliance with those standards.

The Joint Commenters request that the Commission establish self-executing remedies that require incumbent carriers to both monitor their own performance and promptly correct deficiencies, including compensating requesting carriers that receive substandard performance.[39]

Effective remedies have several components. First, ILECs must be required to prepare and provide performance monitoring reports detailing their provision to their own retail operations, any separate local exchange affiliate, requesting carriers in the aggregate, and

---

[39] *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, Order, FCC 99-404 (rel. Dec. 22, 1999).

individual requesting carriers.[40] ILECs must be required to separately provide information about DSL loop provisioning to both business and residential customers. At minimum, the measurements in the performance monitoring reports should cover no larger an area than a single state. In addition, ILECs must negotiate with requesting carriers to establish in interconnection agreements performance standards for timely and efficient provisioning of DSL loops. Lastly, ILECs must negotiate with requesting carriers to establish enforcement mechanisms to ensure compliance with each performance standard, including private or self-executing remedies.

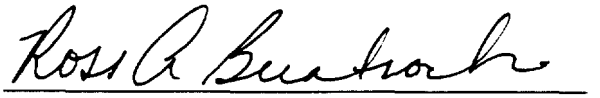
---

40 This approach mirrors that taken by the Commission in its Bell Atlantic-NYNEX decision. *See In the Applications of NYNEX Corporation Transferor, and Bell Atlantic Corporation Transferee, For Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries*, Order, 12 FCC Rcd 19985, ¶ 182 (1997).

As the Commission has previously recognized, self-executing remedies vastly reduce delays by minimizing litigation.[41] In the absence of these mechanisms, ILECs will continue to dominate the DSL market and increase their monopoly position by eroding consumer confidence in the ability of CLECs to rapidly and effectively provide advanced services. The Commission, therefore, not only has the opportunity to greatly reduce the administrative burden on itself and the state commissions that will be caused by unnecessary litigation, but it will also advance the goals of the 1996 Act by promoting the rapid deployment of advanced services.

Respectfully submitted,

KMC TELECOM, INC.
NEXTLINK COMMUNICATIONS, INC.
NEWSOUTH COMMUNICATIONS, INC.



Brad E. Mutschelknaus
Ross A. Buntrock
Michael Engel
KELLEY DRYE & WARREN, LLP
1200 19th Street, NW, Suite 500
Washington, DC 20036
(202) 955-9600 (phone)
(202) 955-9792 (facsimile)
rbuntrock@kelleydrye.com (e-mail)

Their Attorneys

Dated: June 23, 2000

41 *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report And Order In CC Docket No. 98-147 Fourth Report And Order In CC Docket No. 96-98, 14 FCC Rcd 20912, ¶ 176 (1999).

CERTIFICATE OF SERVICE

I, Charles M. Hines III, hereby certify that a true and correct copy of the foregoing **"Comments of KMC Telecom, Inc., NEXTLINK Communications, Inc. and NewSouth Communications, Inc. Re: ALTS Petition for Declaratory Ruling: Broadband Loop Provisioning – CC Docket Nos. 98-147, 96-98, 98-141, NSD-L-0048, DA 00-891"** was delivered by first-class mail or hand delivery this 23rd day of June, 2000 to the individuals on the following list:

Magalie R. Salas (+12 copies) *
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Commissioner Harold Furchtgott-Roth *
Federal Communications Commission
445 12th Street, SW
Room 8A-302
Washington, DC 20554

Chairman William E. Kennard *
Federal Communications Commission
445 12th Street, SW
Room 8B-201
Washington, DC 20554

Commissioner Gloria Tristani *
Federal Communications Commission
445 12th Street, SW
Room 8C-302
Washington, DC 20554

Commissioner Michael Powell *
Federal Communications Commission
445 12th Street, SW
Room 8A-204
Washington, DC 20554

Commissioner Susan Ness *
Federal Communications Commission
445 12th Street, SW
Room 8B-115
Washington, DC 20554

Michelle Carey, Chief *
Policy & Program Planning Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Janice M. Myles *
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW
Room 5-C327
Washington, DC 20554

Jonathan Askin
Association for Local Telecommunications Services
888 17th Street, NW
Washington, DC 20006

International Transcription Services, Inc. *
1231 20th Street, N.W.
Washington, D.C. 20036

Charles M. Hines III

* - Via Hand Delivery